IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 580 OF 1988

Vasant Govind Khandekar. .... Appellant.

Versus.

1. Zilla Parishad, Sholapur,
through the Chief Executive
Officer, Zilla Parishad,
Solapur.

2. Education Officer, Zilla
Parishad, Solapur.

3. Block Development Officer,
Taluka Panchayat Samiti,
Malshiras, District Solapur. .... Respondent.

Shri P.M.Mengane for the Appellant.

Shri Nitin Jamdar for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 1st September, 2004.

ORAL JUDGMENT.

1. This Second Appeal filed by the original Plaintiff was admitted on 1st September 1989 by passing the following order:

"Advocates for parties are heard. Appeal admitted, the substantial questions of law being:

I. Whether Appellant was unlawfully prohibited from working for 1.1.71 to 24.8.72;

&

II. Whether the claim for salary for the aforesaid period was within time.

Advocate for Respondents to waive service of appeal notice upon his clients."

2. The Appellant is the Plaintiff and the Respondents are the Defendants. The Appellant/Plaintiff was working as a Teacher in the Education Department of the Respondent No.1-Zilla Parishad filed a suit for declaration and for consequential reliefs in the year 1970. There was an order of remand passed by the District Court and thereafter on 10th March 1981 the Appellant amended the plaint and incorproated a claim for payment of salary and allowances for the period from 11th January 1971 to 24th August 1972. The said claim made by the Appellant was decreed by the trial Court and the rest of the claim was dismissed. An appeal was carried by the Respondents to the District Court. The District Court allowed the appeal by holding that the

claim for salary and allowance was barred by law of limitation. Exception is taken by the Appellant to the Judgment and Decree of the Appellate Court by preferring this Second Apepal.

3. Shri Mengane the learned Counsel appearing for the Appellant submitted that though the claim for salary was of the year 1971-72, the same was incorporated by way of amendment to the plaint after the cause of action to claim the said amount become available. He relied upon the Judgment of the trial Court to point out that the claim was within limitation. He, therefore, submitted that the period for which the salary and allowance were claimed could not have been treated as leave without pay.

4. I have considered the submissions Shri Mengane. The trial Court has recorded a finding that an entry was made in the service book of the Appellant that the period between 11th January 1971 to 24th August 1972 was treated as leave without pay. Therefore, the Appellant was fully aware that he was denied pay for the said period by treating his absence as leave without pay. However, the application for amendment was made only in the year 1981. In the year 1981, Appellant could have claim the salary only for the period of three years

prior to the date of filing of the application for amendment.

5. Hence no fault can be found with the finding of the Appellate court that the claim for salary was barred by limitation. The Second Appeal is dismissed with no order as to costs.

Judge.